

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(SOUTHERN DIVISION)**

Earl Ayers, et al.,

Plaintiffs,

v.

Ciox Health, LLC,

Defendant.

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) **CIVIL ACTION No.:** _____
) **(Removed from Montgomery County**
) **Circuit Court, Case No.:**
) **C-15-CV-23-003727)**
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**DECLARATION OF PAGE KNOTT IN SUPPORT OF
DEFENDANT CIOX HEALTH, LLC’S NOTICE OF REMOVAL**

I, Page Knott, declare pursuant to 28 U.S.C. § 1746:

1. I am over the age of 18 years and competent to testify regarding the matters contained herein.

2. I am currently employed by Defendant Ciox Health, LLC (“Ciox”) as the Vice President of Operations, and I am knowledgeable of the volume of requests for copies of medical records fulfilled by Ciox on behalf of Maryland healthcare facilities with whom it contracts (the “Maryland Facilities”) and the fees charged for fulfilling such requests.

3. I base this declaration upon my personal knowledge and review of Ciox’s records kept in the ordinary course of business, as well as my review of the complaint in this case which has been provided to me by counsel for Ciox.

4. I am authorized to make this declaration on behalf of Ciox and do so in conjunction with Ciox’s Notice of Removal.

5. I have reviewed the medical records requests that Mr. Ayers and Ms. Harmon attach to their Amended Complaint in this case. Each request was submitted to the Maryland Facility by Mr. Ayers' or Ms. Harmon's attorneys, Gilman & Bedigian LLC ("Gilman") pursuant to a HIPAA authorization letter signed by the patient whose records were being sought—*i.e.*, Mr. Ayers or Ms. Harmon, respectively (an "Attorney Request"). The request letters asked that any responsive records be sent to the patients' attorneys, Gilman. *See* Amended Complaint, Exs. A, B.

6. When, as was the case with the requests referenced in the Amended Complaint, a Maryland Facility receives an Attorney Request, Ciox charges the rates set out in Maryland's Confidentiality of Medical Records Act, Md. Code, Health-Gen. § 4-304, which permits, among others, a \$22.88 charge for "search and retrieval," per-page fees, and shipping and handling fees. Ciox does not apply the "Patient Rate" fee limitations established by the federal Privacy Rule, 45 C.F.R. § 164.524(c)(4), to those Attorney Requests, and so does not limit its charges in response to those requests to the \$6.50 that the federal Department of Health and Human Services has stated is the presumptively permissible maximum charge for records requests that *are* subject to the Patient Rate.

7. If a Maryland court determined that the federal Patient Rate *did* apply to Attorney Requests, Ciox would potentially be limited to charging the presumptive \$6.50 for requests in Maryland made by attorneys on behalf of their clients (the patient) with the patient's HIPAA authorization.

8. To determine the potential impact of such a ruling on Ciox's future revenues, I have calculated, for the period of January 1, 2023 through July 19, 2024, the difference between (1) Ciox's aggregate charges for records requested from Maryland Facilities by Attorney Requests, and (2) the fee limit of \$6.50 under 45 CFR § 164.524(c)(4) multiplied by the total number of

Attorney Requests during the same timeframe (the “Patient Rate Difference”). The Patient Rate Difference calculation reflects the difference between Ciox’s revenues in Maryland for requests such as Mr. Ayers’ and Ms. Harmon’s requests in this case, on the one hand, and what Ciox’s revenues in Maryland would have been if Ciox had been limited to charging at most \$6.50¹ for Attorney Requests assuming 45 CFR § 164.524(c)(4) applied to such requests, on the other hand.

9. To the best of Ciox’s knowledge based on currently available information, for the period of January 1, 2023 through December 31, 2023, Ciox fulfilled over 41,000 Attorney Requests to Maryland Facilities. The aggregate Patient Rate Difference for these requests is approximately, \$2,744,416, or approximately \$228,701 per month.

10. During the period from January 1, 2024 through July 19, 2024, Ciox fulfilled over 30,000 Attorney Requests to Maryland Facilities. The aggregate Patient Rate Difference for these requests is approximately \$1,669,772, or approximately \$251,932 per month.² Extrapolated through December 31, 2024, the expected Patient Rate Difference for the period of January 1, 2024 through December 31, 2024 is approximately \$3,023,184.

11. In addition to the above calculations, in connection with Ciox’s removal of the first-filed state court Complaint, I previously calculated the total value of charges in respect of over 148,600 requests made to the Maryland Facilities during the period from October 3, 2021 through October 3, 2023 (the date of the first-filed state court Complaint in this action) in which a fee was

¹ This calculation assumes that, even when applying the Patient Rate, Ciox still may charge certification fees, contractual eDelivery fees, and sales tax, and so to avoid double-counting, conservatively excludes those amounts from the actual charges calculation. If 45 CFR § 164.524(c)(4) would prevent Ciox from charging these additional amounts over and above the \$6.50 fee limit, the Patient Rate Difference calculations herein would result in even larger numbers.

² This amount is the average of full month revenues for January through June 2024 and partial month revenues of \$148,442 for July 2024 extrapolated to estimate full July 2024 revenues of approximately \$242,194.

charged after searching the medical records of the Maryland Facilities and determining that there were no records responsive to the requests (“NRF Charges”). The total value of these charges during this period exceeds \$2,890,000.

12. I have also calculated the total value of NRF Charges during the period from October 4 through July 19, 2024, which exceeds \$269,000. The total value of Ciox’s NRF Charges during the period from October 3, 2011 through July 19, 2024 exceeds \$3,159,000.

On this day, July 26, 2024, I declare under penalty of perjury that the foregoing is true and correct.



Page Knott
Vice President Operations
Ciox Health, LLC